

Annual Report 1998

Our Mission

To provide a timely, fair and independent appeals process consistent with legislation, policy and the principles of natural justice.

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INTRODUCTION

The Appeals Commission for Alberta Workers' Compensation is a separate and independent quasi-judicial body established pursuant to the *Workers' Compensation Act*. Appeals Commissioners hearing appeals are appointed by the Government of Alberta by Order of the Lieutenant Governor in Council.

The Commission considers appeals from decisions made by the Claims Services Review Committee (CSRC) or the Assessment Review Committee (ARC) which are appointed by the Workers' Compensation Board.

This is a report of the activities of the Appeals Commission for Alberta Workers' Compensation to the Minister of Labour and to the Commission's various constituents. It is primarily a report on the Commission's operations for the fiscal year 1998 and provides some information on the future directions of the Appeals Commission.

REPORT OF THE CHAIRMAN & CHIEF APPEALS COMMISSIONER

Nineteen ninety-eight was a very successful year for the Appeals Commission for Alberta Workers' Compensation. Our mission "To provide a timely, fair and independent appeal process consistent with legislation, policy and principles of natural justice" continued to guide the transition which began in 1996. I am pleased and proud to present this seventh annual report of the activities of the Commission in 1998.

In 1998 the Appeals Commission experienced an increase in initial appeals of 10.5% while applications for reconsideration of prior decisions fell by 26%. The number of appeals in process before the Commission continued to drop from a high of 727 appeals in July of 1996 to 553 appeals at the end of 1998. Of these 553 appeals there were 148 files in an adjourned status as the appellants were not ready to proceed. The conclusion of initial appeals and reconsiderations increased by slightly more than 7% over 1997.

It is often suggested that the Commission has carried a significant backlog of appeals. It seems that over the years there have been as many definitions of backlog as there have been appeals. Most definitions have had limited validity in the context of the Appeals Commissions' operations. The Appeals Commission began 1998 with a well documented process for defining and monitoring the backlog. In its simplest form it addresses the number of appeals and the length of time their processing has been in the control of the Commission.

A reduction of the backlog from 165 initial appeals to 152 initial appeals (in backlog) was noted during the year. While this reduction is important, a far more encouraging change has taken place in the complexion of the Appeals

Commission backlog throughout the year. At the start of 1998 there were eight appeals which had each been in the appeals process at the Commission for over 365 days. By the end of 1998 there were two. As a result of finalizing these complex, long-standing appeals, our average processing time for appeals has increased. The long-term perspective on processing times appears very positive.

The Appeals Commission has addressed some difficult, yet interesting, issues in 1998. It has considered the question of intervenor status of parties and their rights to information; it has considered the status of the WCB as an interested party in appeals before the Commission; and it has addressed the jurisdiction of the Appeals Commission as a supervisory body over the prior levels of adjudication.

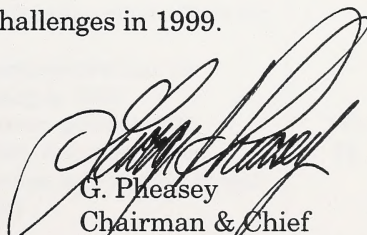
The decisions of the Appeals Commission are subject to the review of a number of bodies. Although these reviews have a limited scope they are extremely important to the Appeals Commission. In 1998 there were four judicial reviews and one appeal to the Court of Appeal. In all cases the decisions of the Commission were upheld. The Ombudsman made recommendations on five files of the 51 that were investigated. Two of these dealt with how the decision was written and should be addressed by the Decision Format Review Project that began in late 1998.

The Board of Directors of the WCB may direct the Appeals Commission to rehear a matter if they consider that the Commission has not properly applied the policy or the provisions of the Act. Board of Directors reviews in 1998 resulted in direction that the Commission rehear six appeals. This is a trend which is of concern to the Commission and will be one of our focuses in 1999.

During 1998 the Appeals Commission continued to refine the strategic planning process and adopted a Three Year Strategic Plan for 1999-2001. Of particular significance for the up-coming year is the linking of individual performance objectives to the strategic plan.

Emphasis on the upgrading of technology and its application within the Commission continued in 1998. The upgrading of hardware and acquisition of software will continue to show significant rewards for the Commission in the next year. We are experiencing increased administrative efficiency and improved processes due to application of technology. A very significant commitment of resources was continued in 1998 for the development of the database and Appeals Management System. This new, Y2K compliant system, will significantly enhance the Commission's ability to manage our workload, including reporting and tracking of all matters before the Appeals Commission.

Each year the Appeals Commission recruits new commissioners and re-appoints existing commissioners. We also appoint new staff to replace those who leave the Commission to take on new challenges. I continue to be impressed by all those who carry out the work of the Commission. Their contributions, their dedication and their commitment to providing a quality service to Albertans has resulted in a banner year for the Appeals Commission. Thank you to each of our staff members for their extremely hard work. I am proud to be associated with this fine group of individuals and I look forward with anticipation and eagerness to our challenges in 1999.



G. Pheasey
Chairman & Chief
Appeals Commissioner

REPORT ON THE 1998 OBJECTIVES & INITIATIVES

The Appeals Commission for Alberta Workers' Compensation identified twelve processing or operational objectives and three major program initiatives for 1998, as a result of the business planning process conducted in 1997.

The following report details the activities which were completed in 1998 towards the accomplishments of these objectives. The significant accomplishments outlined, reflect the overall success of the Commission in meeting the objectives and major initiatives.

OBJECTIVES

OBJECTIVE ONE

Conclude a minimum of 70% of the total of: appeals on hand at year end 1997 and the initial appeals received in 1998 process.

KEY MEASURES

	Obj.	Actual
• Initial appeals on hand for the year end 1997		522
• Initial appeals for 1998		1194
• Total initial appeals for processing		1716
Objective: process 70%	1201	1235
• Initial appeals outstanding at year end 1998	515	493

CONCLUSION

ACCOMPLISHED

OBJECTIVE TWO

Conclude a minimum of 75% of the total of: the applications for reconsideration on hand at year end 1997 and the applications for reconsideration received in 1998.

KEY MEASURES

	Obj.	Actual
• Reconsiderations on hand for the year end 1997	64	64
• Reconsideration applications for 1998		181
• Total reconsiderations for processing in 1998		245
Objective: process 70%	172	185
• Projected reconsideration applications outstanding at year end 1998	73	60

CONCLUSION

ACCOMPLISHED

OBJECTIVE THREE

Reduce the number of appeals in the Appeals Commission Backlog by 5%.

KEY MEASURES

- Commission backlog of initial appeals January 1, 1998
Objective: 5% reduction
- Commission Backlog of initial appeals January 1, 1999

Obj. Actual

	165
8	13
157	152

CONCLUSION

ACCOMPLISHED

OBJECTIVE FOUR

Reduce the processing time for initial appeals by 10%.

KEY MEASURES

- Processing time for initial appeals January 1, 1998
Objective: 10% reduction
- Processing time for initial appeals January 1, 1999

Obj. Actual

	135.5 days
(-)	(+)
13.5 days	13.5 days
122 days	149 days

CONCLUSION

This objective was not achieved. This was due to finalization of a number of appeals that had been in the Commission backlog for prolonged periods of time. Finalization of these files raises the processing time as it is an average of all files finalized.

OBJECTIVE FIVE

Reduce the period of time from application for appeal received to hearing scheduled by 10%.

KEY MEASURES

	Obj.	Actual
• Time from appeal received to hearing scheduled January 1, 1998		68.3 days
	(-)	(+)
Objective: 10% reduction	6.3 days	14.4 days
• Time from appeal received to hearing scheduled January 1, 1999.	61.5 days	82.7 days

CONCLUSION

This objective was not achieved. This was due to finalization of a number of appeals that had been in the Commission backlog for prolonged periods of time. Finalization of these files raises the processing time as it is an average of all files finalized.

OBJECTIVE SIX

Reduce the period of time from hearing scheduled to appeal finalized by 10%.

KEY MEASURES

	Obj.	Actual
• Time from hearing scheduled to finalized January 1, 1998		67 days
	(-)	(+)
Objective: 10% reduction	6.7 days	.6 days
• Time from hearing scheduled to finalized January 1, 1999	60.3 days	66.4 days

CONCLUSION

This objective was not achieved. This was due to finalization of a number of appeals that had been in the Commission backlog for prolonged periods of time. Finalization of these files raises the processing time as it is an average of all files finalized.

OBJECTIVE SEVEN

Number of Appeals Commission decisions overturned by the courts to be zero.

KEY MEASURES

	Obj.	Actual
<ul style="list-style-type: none"> Appeals Commission decisions overturned by the Courts in 1997. 		0
Objective: Maintain 1997 status	0	
<ul style="list-style-type: none"> Appeals Commission decisions overturned by the Courts in 1998 		0

CONCLUSION

ACCOMPLISHED

OBJECTIVE EIGHT

Reduce the number of files on which the Ombudsman issued recommendations by 50%.

KEY MEASURES

	Obj.	Actual
<ul style="list-style-type: none"> # of files the Ombudsman made recommendations on in 1997 		4
Objective: Reduce by 50%	2	
<ul style="list-style-type: none"> # of files the Ombudsman made recommendations on in 1998 		6

CONCLUSION

This objective was not achieved. Initiatives presently underway in interpretative, practice guidelines and decision format should improve this performance. Recommendations issued by the Ombudsman were implemented.

OBJECTIVE NINE

Reduce the number of files where the Board of Directors pursuant to Section 8(7) directs a rehearing by 50%.

KEY MEASURES

	Obj.	Actual
• # of rehearings directed by the Board of Directors		2
Objective: Reduce by 50%	1	
• # of rehearings directed by the Board of Directors pursuant to Section 8(7) in 1998.		6

CONCLUSION

This objective was not achieved. Initiatives presently underway in interpretative guidelines and practise guidelines should improve performance in this area in the long term.

OBJECTIVE TEN

Reduce the number of requests for clarifications where a clarification is issued by 50%.

KEY MEASURES

	Obj.	Actual
• # of clarifications by the Commission in 1997.		99
Objective: Reduce by 50%	49	
• # of clarifications issued by the Commission in 1998.		44

CONCLUSION

ACCOMPLISHED

OBJECTIVE ELEVEN

Reduce the number of "on our own motion"
reconsideration of decisions by 50%.

KEY MEASURES

	Obj.	Actual
• # of decisions the Commission reconsidered on its own motion in 1997.		28
Objective: Reduce by 50%	14	
• # of decisions the Commission reconsidered on its own motion in 1998.		12

CONCLUSION

ACCOMPLISHED

OBJECTIVE TWELVE

Complete 1998 within the approved 1998
operating budget of four million dollars.

KEY MEASURES

	Obj.	Actual
• 1998 Budget	\$3,982,042	
• 1998 Expenditures		\$3,925,661

CONCLUSION

ACCOMPLISHED

INITIATIVES

1998 MAJOR INITIATIVE

QUALITY ASSURANCE PROGRAM

To develop and implement a comprehensive quality assurance program to ensure excellence in quality of product and service for the Appeals Commission. This initiative will include defining quality, identifying the areas/processes to be measured, defining the standards of quality, identifying and developing the tools for evaluation and measurement and developing the reporting mechanisms for communication of results of quality measurement.

1998 REPORT

A Quality Management Specialist was hired in the fall of 1998 when it was determined that, in order to accomplish the 1998 major initiative, a staff member should be dedicated to the project on a full-time basis. The Quality Management Specialist has prepared a three year Implementation Plan for the development of a Quality Management System. The work to accomplish this initiative is underway.

CONCLUSION

Commenced but progress not significant enough to consider accomplished.

1998 MAJOR INITIATIVE

INTEGRATING AND APPLYING SYSTEMS TECHNOLOGY TO THE OPERATIONS OF THE APPEALS COMMISSION

Upgrading of the existing computer hardware and software commenced in 1997 and continued as planned for 1998. The current initiative now is to integrate the technology into the operations of the Appeals Commission, to redesign our operations, processes and procedures to take full advantage of the technology which we have available and to build the competencies within the Appeals Commission to effectively and efficiently use the technology and systems available.

1998 REPORT

Upgrading of computer hardware and software has been completed including:

- upgraded computers for all staff and access to workstations for Commissioners
- upgraded data line between Calgary and Edmonton
- installation of file server to provide shared data for users
- installation of CD ROM tower to provide shared access to reference materials.
- upgraded shared printers
- access to multi media projectors
- upgraded Fax machines and photocopiers
- telephone voice mail for all staff
- workstations upgraded to Windows NT and Office 97 Pro
- medical/legal spellchecker on all workstations.
- PageMaker has been installed for in-house desktop publishing

Integration of the above technology into the operations of the Commission has progressed with:

- Training for majority of users in Windows NT, Office 97 and Word.
- Installation and use of common templates, macros and autotext in the production of documents
- Use of the file server to share information.

CONCLUSION

ACCOMPLISHED

1998 MAJOR INITIATIVE

SETTING AND IMPLEMENTING PERFORMANCE STANDARDS

To develop a comprehensive set of standards for the Appeals Commission and for individuals which will clearly define the expected performance levels. Develop the measures which will identify whether standards have been met and integrate these performance standards and measures into the performance assessment program within the Appeals Commission.

1998 REPORT

1. Completion of an Appeals Commission Strategic Plan which includes:
 - Key measures, major activities, and supporting measures for long term objectives
 - Key measures and major activities for processing objectives
2. Performance development plans have been completed for teams and individuals based on the objectives of the Appeals Commission.
3. A performance assessment system is in place that will evaluate progress towards individual objectives on a quarterly basis.

CONCLUSION

ACCOMPLISHED

HIGHLIGHTS OF 1998 JUDICIAL/OMBUDSMAN/ BOARD OF DIRECTORS REVIEWS

APPLICATIONS FOR JUDICIAL REVIEW

In 1998, four applications for judicial review were heard and dismissed by the Court of Queen's Bench.

- In *Krawec v. Appeals Commission*, the Applicant was seeking a declaration that he had a right to record the Appeals Commission proceedings if he paid for the recording himself. The court found that the application was more properly an application for certiorari (to quash the Appeals Commission's decision) and it was dismissed because it wasn't made in time (within six months from the Appeals Commission's decision). The court also made it clear that it considered the Appeals Commission to be the master of its own house with authority to make its own rules of procedure. Finally, the court determined that there is no right either at common law or in the principles of natural justice to record proceedings.
- In *Johannessen v. Appeals Commission*, the Applicant sought to have the Commission's decision quashed on the basis that the Commission failed to comply with directions given by the Court of Queen's Bench in an order dated November 20, 1996 and that the decision reached by the Commission was patently unreasonable. The November 1996 order provided that: the Commission was to hold "a full and complete rehearing of this matter"; that a new panel be struck to rehear the matter; that the new *Rules of Procedure* be observed and finally, notwithstanding the new rules, that the new hearing be recorded so that a complete record of the proceedings would be available, all witnesses be examined under oath and that four named physicians be required to attend and be cross-examined by the Applicant. The court found that "members of the panel were acutely aware of the directions given by Binder J. and in their final conclusion referred particularly to paragraph 3 of the Order. The court further found that the Commission complied with all aspects of the Order in question. The court held that the decision "had a logical basis for the decision reached which was neither patently unreasonable nor clearly irrational. As a matter of fact, although those findings are indeed an answer to the allegations made by the Applicant and would result in a dismissal of the application, in these particular circumstances I am satisfied that the decision reached would meet a test of reasonableness "simpliciter". The application was dismissed.
- The grounds set out in the application for judicial review in *Haberstock v. Workers' Compensation Board et al* were that the Appeals Commission's decision was patently unreasonable. The Applicant suffered injuries in two accidents occurring in the course of his work as a truck driver. The Appeals Commission determined that the Applicant was not entitled to a permanent partial disability award for certain injuries and that other injuries were not caused by the accidents. It also found that although his right hip was injured in the accidents, he had recovered

and there was no entitlement to a permanent disability award. The Applicant was granted a permanent partial disability award for injury to his neck and head. The court stated "[The Appeals Commission] concluded in every case that the evidence supporting one conclusion significantly outweighed the evidence pointing the other way. To interfere, I would have to conclude that the Commission reached clearly irrational conclusions. I am not able to do so. The court found that the Commission's decision was not patently unreasonable and dismissed the application.

- In *Nicholson v. Appeals Commission* the Applicant sought the court's review on the basis that the Commission suppressed evidence, that all three levels of the compensation appeal system work in concert and that the Commission erred in retroactively setting the effective date of his compensation rate. The date of the Appeals Commission decision was March 15, 1996. There was a further decision made on April 21, 1997 which refused to grant a rehearing of the March 15, 1996 decision. The Originating Notice of motion was not filed until October 2, 1997. The court dismissed the application on the grounds that the April decision was a reasonable one and that it did not reinstate the six month limitation period which began running on March 15, 1996.

The *Stewart v. Appeals Commission* matter was heard and dismissed by the Court of Appeal. The reasons for decision of the Court of Queen's Bench were upheld. The Court of Queen's Bench found that "There is no doubt here that the Appeals Commission's conclusions, after reviewing all the available evidence, were precisely within that tribunal jurisdiction.... The Commission neither lost nor exceeded its jurisdiction and there is no evidence that it failed to weigh or receive relevant evidence or that it relied upon extraneous evidence".

COMPLAINTS MADE TO THE OFFICE OF THE OMBUDSMAN

In 1998, the Commission was notified of 81 complaints to the Ombudsman regarding decisions made by the Appeals Commission.

The Office of the Ombudsman thoroughly investigates complaints and considers the reasonableness of the Commission's analysis. The result of most Ombudsman investigations has been notification from the Ombudsman that there is no reason to question the Commission's decision. During 1998, six Ombudsman investigations resulted in recommendations to the Appeals Commission.

- The Ombudsman expressed a concern that an Appeals Commission decision stated that there was no medical reporting for a period of 19 months. The Ombudsman's review indicated that there had been some medical reporting during the time the decision stated that there was none.
- The Ombudsman found that there was an administrative error in the manner in which a decision was written by the Appeals Commission. While it was

confirmed supporting medical documentation was before the Appeals Commission, it was, in his opinion, not properly referenced in the decision. It was also his opinion that it was difficult to reach a logical conclusion based on the identifiable facts, based on the manner in which the decision has been written.

- The Ombudsman stated that, in his opinion, the Appeals Commission decision consisting of a reference supporting the CSRC decision was not adequate and did not explain how the Appeals Commission arrived at its decision. He expressed a belief that the Appeals Commission must arrive at its own conclusions. It cannot simply “rubber stamp” an already concluded Claims Services Review Committee decision.
- The Ombudsman expressed a concern that an Appeals Commission decision did not deal with an issue raised by the appellant. The appellant raised the benefit of doubt policy in the initial appeal letter and a follow-up letter. The Appeals Commission decision did not address that policy in its original decision. The Ombudsman recommended that the Appeals Commission issue an addendum to its original decision addressing the arguments raised regarding the benefit of doubt policy.
- The Ombudsman’s opinion was that the Appeals Commission failed to look at all circumstances of the injured worker and the total effect of the injury on a worker. The Ombudsman suggested that there were three elements which the Appeals Commission should address when making a decision regarding an appeal for additional compensation for disfigurement. The first element was the effect of the disfigurement on the worker in terms of “social considerations”. The second element was that the Appeals Commission should consider the impact of the disability on the worker’s ability to accomplish tasks in a reasonable period of time. Finally the Ombudsman suggested that the Appeals Commission should investigate the facilities available to the worker in order to minimize the impact of the disability on his ability to maintain his equipment.
- The Ombudsman felt that proper consideration had not been given to a worker’s request that the twelve month time limitation be waived. The Appeals Commission failed to consider information which was relevant to the worker’s appeal but which was contained on a different claim file.

BOARD OF DIRECTORS – s. 8(7) DIRECTIONS

The Board of Directors of the Workers’ Compensation Board has the authority to direct the Appeals Commission to rehear matters if the Board of Directors considers that the Appeals Commission has failed to properly apply the legislation or policy. The Appeals Commission received six directions in 1998. At the end of 1998, the Commission had reheard three of those appeals. There were three outstanding at the end of the year.

- The worker appealed the rate of compensation established for his claim by the WCB. The Appeals Commission decided to adjust his rate including in part, a

direction to the WCB to calculate holiday pay of 7.2% on overtime hours worked. The WCB refused to implement the decision because it confirmed that holiday pay was not paid on overtime hours by the employer. The matter was referred to the board of directors which directed a rehearing of the matter on the basis that the Commission failed to properly apply sections 7(5) [sic], 12(3) and 51(2) of the *Workers' Compensation Act* as well as Policy COM 15. The Commission reheard the matter and concluded that the previous panel had "erred in directing that the compensation rate be set using an amount that was not paid to the worker while he was working – namely holiday pay of 7.2% on overtime hours".

- The worker suffered an injury to his right shoulder in a work-related accident. The day before that accident, the worker was involved in a car accident and there was some suggestion that the injury was related to the car accident as opposed to the work accident. The claim was accepted by the WCB on the basis of the benefit of the doubt policy. The employer applied for cost relief given that there was some suggestion that a non-work related accident might have contributed to the worker's injury. The Appeals Commission decided that it would grant the employer's application on the basis that there was some doubt as to the cause of the injury. The board of directors reviewed this decision and directed the Commission to rehear the matter because the board determined that the Commission failed to properly apply policies "... when it found the application of benefit of doubt is one of the 19 specified exceptional circumstances in Policy ADJ 3, when it is not". The Commission reheard the matter and denied the employer's application because it did not meet the criteria outlined in Policy ADJ 3.
- The issue before the Commission was whether an employer was entitled to establish a new experience account as a result of a change in ownership which occurred in 1989. The Commission concluded that the nature of the business operations did not change in 1989 and that established a continuity of business. On that basis, the Commission denied the application. The matter was referred to the board of directors who directed the Commission to rehear the matter because the issue of 'continuity' meant continuity in the identity of the owner or owners pre and post sale, not continuity in the 'nature of the operations and associated risks involved in the business'. The Commission reheard the matter and concluded that the employer had a change of ownership and there was no continuity between the new and previous owner/owners. The Commission therefore granted the employer's application for a new experience account.

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

There was one complaint made to the Office of the Privacy Commissioner regarding the Appeals Commission in October of 1998. An investigation of this complaint was conducted, however the investigator had not completed her report at the close of 1998.

HIGHLIGHTS OF 1998 PROCEDURAL ISSUES

During 1998, the Appeals Commission, in a number of cases, was required to deal with the status of various individuals and organizations before the Commission.

a) Intervenor Status

A number of applications were made for status as an 'interested party' where the applicant was not recognized by the Appeals Commission as a party to the appeal. The Commission concluded that in order to be granted status as an 'interested party', the applicant must be directly affected by the Commission's decision. The Commission further concluded that, in some circumstances, it would be appropriate to grant status to applicants who were not directly affected by the Commission's decision. The Commission identified this different type of status as 'intervenor' status. The Commission used the tests of relevance to determine whether to grant status as an intervenor. If the applicant had some indirect interest in the decision and could persuade the Commission that it could offer some relevant information which would assist the Commission in making a decision, then it might be appropriate to grant status as an intervenor. The Commission considered the issue of confidentiality in addressing intervenor status. It was determined that since an intervenor was not considered to be a full party to the proceedings, it would be appropriate to restrict access to the parties' files.

b) The status of the Workers' Compensation Board as an interested party

The Worker's Compensation Board applied for 'interested party' status in a number of appeals this year. These applications were denied by the Commission. The Commission found that the *Workers' Compensation Act* did not contain any provision which granted the WCB the ability to appear before the Commission as a party to an appeal. The Commission examined the common law to determine whether there was any argument which might support the WCB's application for status and concluded that the role of an initial decision-maker in the appeal process must be limited to explaining the record, where necessary. The Commission concluded that if an explanation of the record was in order, the Commission could require such an explanation be provided, however, the role of the WCB would be as a witness as opposed to an interested party.

c) Right of the Workers' Compensation Board to request reconsideration

A number of appellants questioned the Appeals Commission's right to accept information from the WCB after the Commission has already made

a final and binding decision on an appeal. In some cases, new evidence was referred by the WCB to the Commission after a decision had been made. The Commission then referred this new evidence to a panel in order to determine whether the Commission would reconsider its original decision. The appellants argued that the WCB did not have status to bring an application for reconsideration because only 'interested parties' had the right to request a reconsideration of an Appeals Commission decision. The WCB was not requesting a reconsideration of the decision but merely seeking direction from the Commission as to whether the Commission was seized with jurisdiction over the matter or whether the WCB could adjudicate the file using the new evidence. The Appeals Commission recognized that, as the ongoing administrator of the compensation claim, the WCB would occasionally have new evidence which it might be required to refer to the Commission. The WCB's own policy requires them to refer any new evidence to the last level which made a decision on the matter. The Commission accepted this practice as being appropriate given that the Commission's decisions are final and conclusive and should not be overruled as a result of the WCB obtaining new evidence on a file. The Commission has a very wide power of reconsideration (s. 12 of the *Workers' Compensation Act*) and is responsible for evaluating any new evidence received which might impact the Commission's decision.

d) Jurisdiction

The Appellant brought to the Commission complaints regarding the conduct of the Workers' Compensation Board on a file. The Appellant argued that the Commission had the jurisdiction to hear such complaints and that the treatment given by the WCB would be relevant to the issues of appeal. The Commission determined that because the hearing at the Commission was a complete new hearing, it was not relevant to consider the conduct of the lower decision-maker. The Commission also concluded that it did not have supervisory jurisdiction over the conduct of the Workers' Compensation Board.

A number of appellants have argued that the Appeals Commission has the right to hear an appeal from either subsection 40(7) or ss. 116(6) of the *Workers' Compensation Act* regarding the waiving of the one year time limit for appeals to the Claims Services Review Committee (CSRC) or Assessment Review Committee (ARC). These provisions permit the Chair of either the CSRC or ARC to extend the time limit for an appeal to those committees if, the chair considers there is a justifiable reason for doing so. Subsection 40(9) and ss. 116(8) clearly state that there is no appeal from a decision made by the chair. The Commission has concluded that it does not have the jurisdiction to hear an appeal of the specific decision of the chair of the CSRC or ARC not to extend the appeal period.

1999 APPEALS COMMISSION STRATEGIC OBJECTIVES

The strategic planning process at the Appeals Commission continues to improve with each year. The three year strategic plan for 1999 to 2001 provides a focus for the activities of the Commission which will continue to move us forward.

A significant improvement in the strategic planning process has been the establishment of personal performance objectives and working unit objectives. These personal and unit objectives are linked directly to the long-term objectives and processing objectives in the strategic plan.

The following section identifies the long-term and processing objectives from the plan. Details regarding the major activities and performance measures are available in the Three Year Strategic Plan document which has been published.

Achieving our long-term objective will move the Commission toward fulfilling our mission within the framework of the values we believe in. Achieving our processing objective will ensure that we continue to improve our core service – hearing appeals.

LONG TERM OBJECTIVES

Improve application of legislation, policy and procedure.

Ensuring consistent, correct application of legislation, Workers' Compensation Board policy and Appeals Commission policy and procedures is critical to ensuring fairness and quality in the appeal process. To accomplish this we will develop a comprehensive framework of Appeals Commission policy and procedures which will provide guidelines and direction for the Commission and those involved in the appeals process.

Ensure an appeal system that is accessible and clear to users.

Improving service begins with improving access to the appeal system. Users should be able to receive quality and timely service regardless of their familiarity with the system. The appeal system and processes should be clear and easily understood by all – transparent.

To accomplish this, the Commission will ensure the system is as simple as possible, that all information which can be shared is, and that information is clear and understandable.

Provide for uncompromised independence of decision making.

Decision-making on appeals must be done independently; free from any bias or influence. To be independent and to be perceived as independent, involves ensuring structures, services and relationships are in place, which allow absolute freedom in decision-making.

Implement a Quality Management System.

Quality is a significant component in the Appeals Commission commitment to excellence in service. To achieve and maintain the standards of quality of systems, processes, products and services we will develop and implement a comprehensive Quality Management System for the Commission including Quality Control, Quality Improvement and Quality Planning.

Improve organizational expertise and learning.

Applying superior expertise and knowledge within excellent appeal and administrative processes will enhance achievement of quality of product and service.

To achieve superior expertise and knowledge the Commission will develop a comprehensive competency based training program for improving and maximizing the use of competencies and abilities.

Maximize access to, and availability of, up-to-date technology.

Many service improvements, process and procedural changes and communication and information sharing initiatives cannot be accomplished - without the advantage of up-to-date technology. To achieve maximum access and benefits of technology, the Commission will implement a long term appropriately researched plan to acquire and maintain technology.

Integrate technology and systems in innovative ways in the processes and operations of the Appeals Commission.

By redesigning our operations, processes, systems and procedures to take full advantage of the benefits of technology we will enhance our products and services including improving access to information and simplifying delivery mechanisms. Effective integration is built upon ensuring competencies to effectively access and use new technology.

Implement up-to-date file management practises.

Modern file management goes well beyond paper files to electronic file management systems that identify and track backlog, bottlenecks, assist with scheduling, adjournments and alert staff of timely processing. The Commission will develop and maintain a comprehensive file management system that provides full and accurate data and information.

Implement up-to-date business management practises.

Effective and efficient management of the Appeals Commission requires sound human resource, financial and business planning practises. To accomplish this the Commission will adopt a comprehensive set of documented business practises that will be subject to independent audit.

PROCESSING OBJECTIVE

Improve the service provided to appellants by increasing the number of appeals and other applications finalized while decreasing the time used in processing.

KEY MEASURES

- Conclude a minimum of 70% of: initial appeals on hand at the start of the year plus the initial appeals received in 1999.
70% of: 493+1254 (projected) = 1223 appeals
Stretch Target – 72%
= 1258 appeals
- Conclude a minimum of 75% of: applications for reconsideration at year end plus applications for reconsiderations received in 1999.
75% of: 60 + 190 (projected) = 187
Stretch Target – 78% = 195
- Time from the receipt of an appeal until the appeal is finalized
Baseline – 150 days
Target – 140 days
Stretch Target – 135 days
- Time from the receipt of an appeal until the hearing
Baseline – 83 days
Target – 75 days
Stretch Target – 72 days
- Time from the hearing until the appeal is finalized
Baseline – 67 days
Target – 65 days
Stretch Target – 63 days
- % of appeals that are processed within 103 days of receipt
Target – 60% of appeals finalized
Stretch Target – 65% of appeals finalized
- % of appeals that are processed within 140 days of receipt
Target – 90% of appeals finalized
Stretch Target – 92% of appeals finalized
- Reduce the Commission backlog appeals
Baseline – 152
Target – 10% reduction
Stretch Target – 15%

PROCESSING OBJECTIVE

Reduce the amount of rework associated with appeal workload.

KEY MEASURES

- Reduction in reconsiderations on own motion
Baseline – 7
Target – 10% reduction
Stretch Target – 20% reduction
- Reduction in Section 8(7) applications granted
Baseline – 6
Target – 16 % reduction
Stretch Target – 33 % reduction
- Reduction in clarifications issued
Baseline – 44
Target – 20% reduction
Stretch Target – 25 % reduction
- Maintain the number of decisions overturned by the courts
Baseline – 0
Target – 0
Stretch Target – 0
- Reduction in the number of Ombudsman recommendations issued
Baseline – 5
Target – 33% reduction
Stretch Target – 66 % reduction

APPENDIX A

THREE YEAR STATISTICAL SUMMARY

1996 - 1998

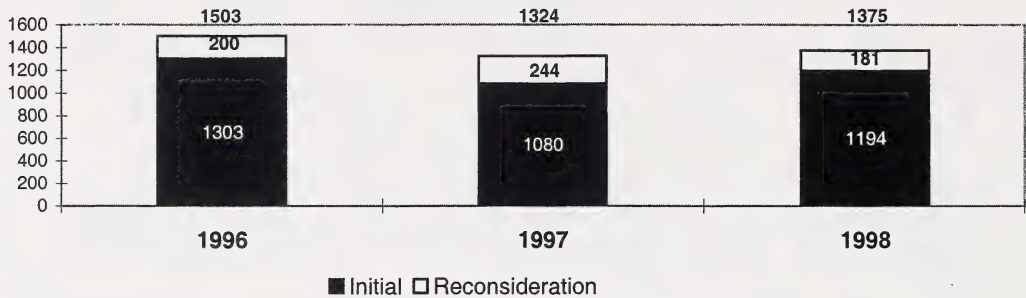
The statistical information contained in this Appendix summarizes the activities of the Appeals Commission in the following five major categories:

- Appeals Volumes
- Hearing Activities
- Decision Activities
- Processing Timelines
- Review of Decisions

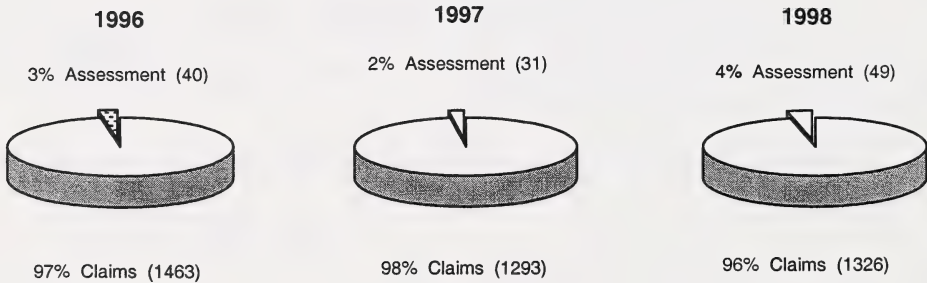
It is intended to provide a historical perspective of the activities of the Appeals Commission over the past three years.

APPEAL VOLUMES

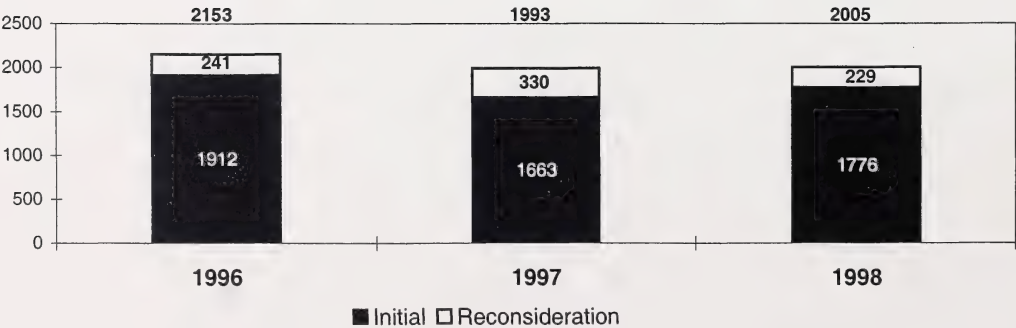
Initial Appeals and Applications for Reconsiderations Received



Breakdown of All Applications Type



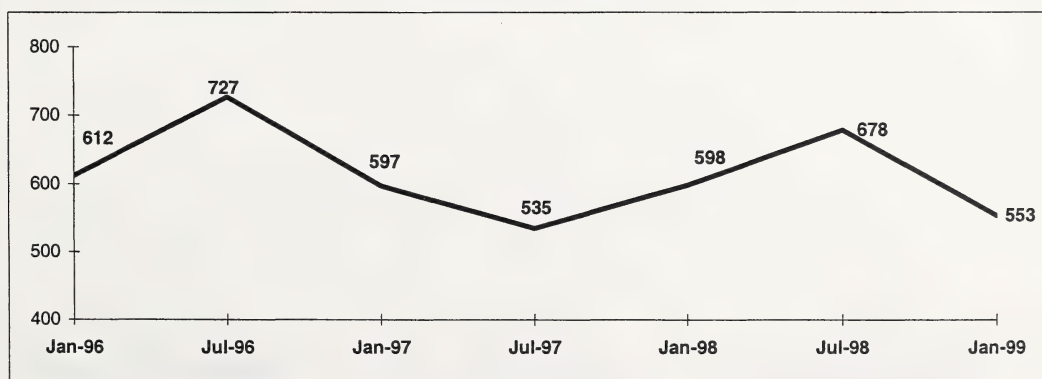
Total Issues Involved in Initial Appeals and Applications for Reconsiderations



Issues of Appeal by Volume

	1996	1997	1998
Temporary Total Disability Entitlement	14%	15%	12%
Permanent Disability Entitlement	15%	13%	9%
Additional Entitlement	16%	13%	11%
Earnings Loss Supplement Entitlement	15%	10%	6%
Acceptability of Claim	9%	9%	10%
Change in Permanent Disability Entitlement	8%	7%	5%
Increased Responsibility	2%	7%	12%
Cost Relief	1%	2%	6%
Other	20%	24%	29%

Appeals in Process



HEARING ACTIVITIES

Number of Hearings Conducted

1996
1138 Hearings Conducted

1997
1029 Hearings Conducted

1998
1239 Hearings Conducted

Type of Hearing

7% Documentary (85)



93% In-Person (1053)

8% Documentary (80)



92% In-Person (949)

10% Documentary (130)



90% In-Person (1109)

Representation at Hearing

9% Unrepresented (100)



91% Representation (1038)

10% Unrepresented (101)



90% Representation (928)

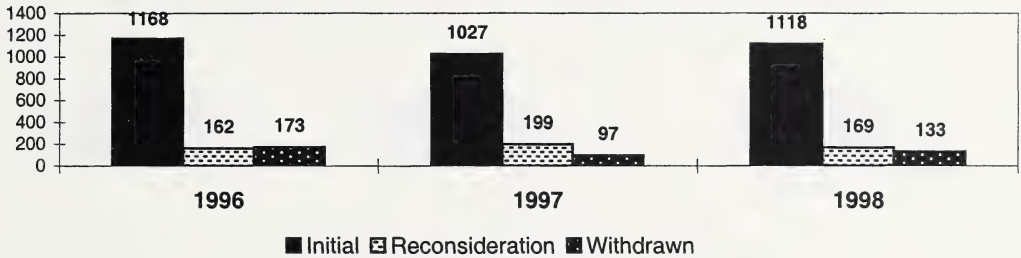
14% Unrepresented (158)



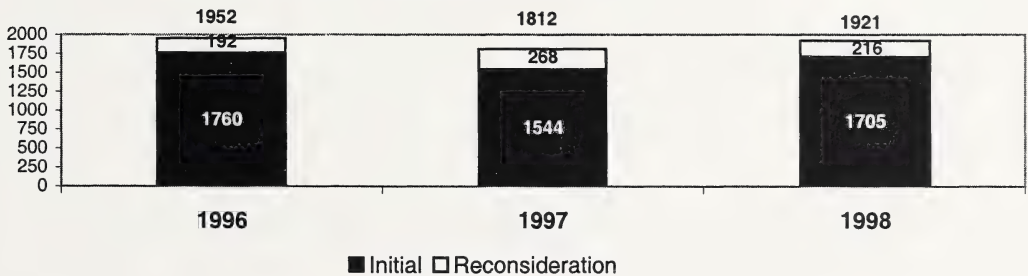
86% Representation (937)

DECISION ACTIVITIES

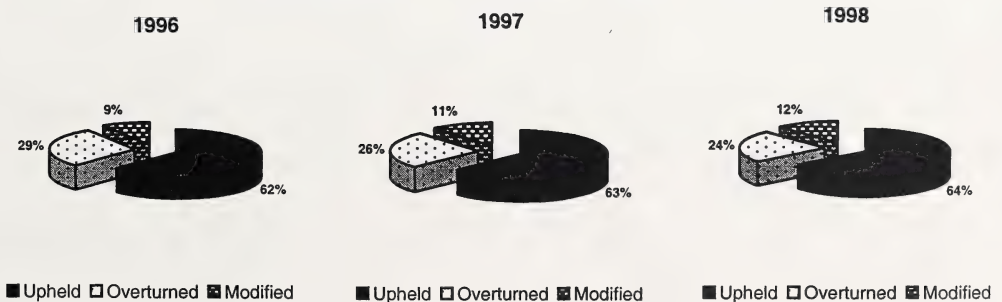
Number of Applications Finalized



Number of Issues of Appeal Finalized

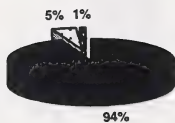


Final Disposition of Initial Appeals by Issue



Final Disposition of Reconsiderations by Issue

1996



1997



1998



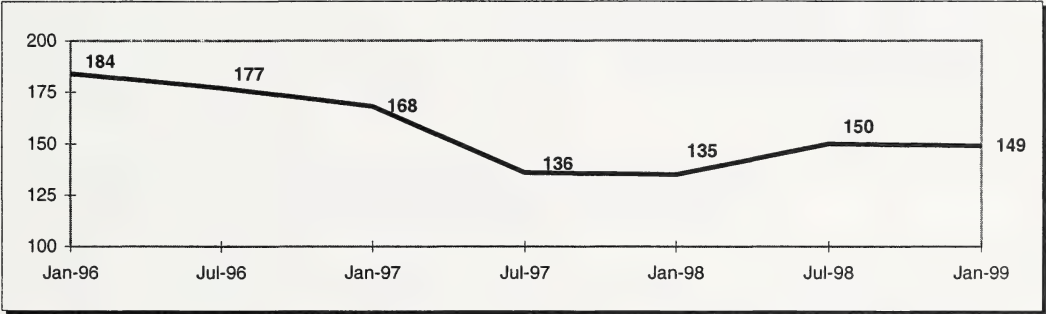
■ Upheld □ Overturned ▨ Modified

■ Upheld □ Overturned ▨ Modified

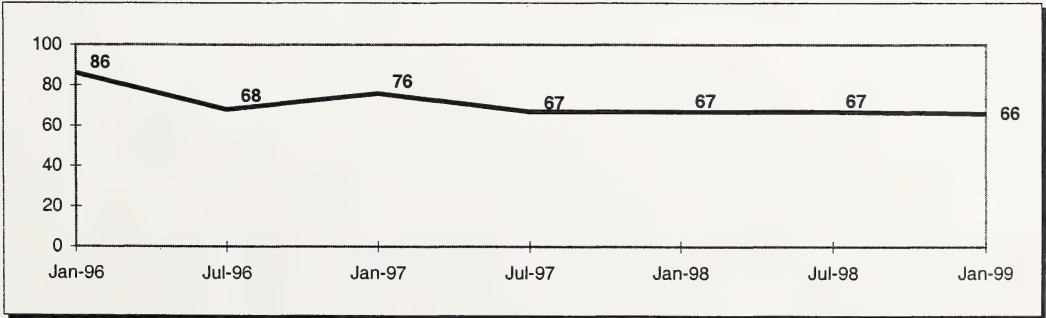
■ Upheld □ Overturned ▨ Modified

PROCESSING TIMELINES

Number of Days from Appeal Accepted to Appeal Finalized



Number of Days from Hearing Scheduled to Appeal Finalized



REVIEW OF DECISIONS

Judicial Review of Appeals Commission Decisions

	1996	1997	1998
# of court actions commenced	16	12	13
# of court actions concluded	11	15	5
# of applications dismissed by court	5	10	5
# of decisions overturned by court	1	0	0
# of decisions Appeals Commission agreed to reconsider without court order	2	4	n/a
# of court actions adjourned sine die/discontinued	4	3	6

Review of Appeals Commission Decisions by the Board of Directors – Section 8(7)

	1996	1997	1998
# of Section 8(7) Reviews	17	11	23
# of Section 8(7) Concluded	16	11	16
# of Section 8(7) Dismissed	14	9	10
# of Section 8(7) Referrals to AC by the Board of Directors	2	2	6

Ombudsman's Review of Appeals Commission Decisions

	1996	1997	1998
# of Ombudsman Investigations Commenced	123	102	81
# of Ombudsman Investigations Concluded	111	109	60
# Recommendations made by the Ombudsman	6	4	6

Appeals Commission Own Motion Reconsiderations of Its' Decisions

1996	1997	1998
N/a	28	12

Appeals Commission Clarification of Decisions

1996	1997	1998
N/a	99*	44

* Note: The 1997 total is based on the actual number for the last 9 months of the year.

APPENDIX B

THREE YEAR FINANCIAL SUMMARY

1996 – 1998

This section provides a three year summary of the operating and capital expenditures of the Appeals Commission together with highlights and explanatory notes for each of the three years.

All operating costs of the Appeals Commission are paid from the Accident Fund as provided by the Workers Compensation Act.

OPERATING BUDGET	1996	1997	1998
<u>COMMISSION SALARIES AND BENEFITS</u>			
Appeals Commissioners Salaries	899,151	982,859	1,143,960
Commission Staff Salaries (including severances)	1,310,858	1,432,920	1,527,833
Benefits	280,482	360,765	333,812
Performance Awards	112,000	115,760	65,543
Other Staff Related Expenses – ie. Training	19,752	35,072	59,079
<u>TOTAL SALARIES & BENEFITS</u>	2,622,063	2,927,376	3,130,227
<u>FIXED COSTS</u>			
Rental Leased Premises	223,597	255,756	311,324
Amortization	22,928	29,174	43,335
<u>TOTAL FIXED COSTS</u>	246,525	284,930	354,659
<u>SYSTEMS – HARDWARE/SOFTWARE COSTS</u>	25,175	53,131	86,577
<u>ADMINISTRATIVE COSTS</u>			
Administrative services from WCB for systems	52,674	81,109	98,239
Travel	37,475	61,650	89,045
Other Administrative Costs	149,286	71,580	173,667
<u>TOTAL ADMINISTRATIVE COSTS</u>	239,435	214,339	360,951
<u>TOTAL OPERATING EXPENDITURES</u>	3,107,523	3,479,776	3,932,414
<u>APPROVED BUDGET</u>	2,957,703	3,410,911	3,982,041
<u>BUDGET VARIANCE</u>	(149,820)	(68,865)	49,627
<u>CAPITAL BUDGET</u>			
<u>LEASEHOLD IMPROVEMENT EXPENDITURES</u>	0	266,231	79,962
<u>APPROVED CAPITAL BUDGET</u>	0	0	150,000
<u>BUDGET VARIANCE</u>	0	(266,231)	70,038

1998 BUDGET HIGHLIGHTS AND EXPLANATORY NOTES

OPERATING BUDGET

- A surplus of \$49,627 or 1.25% of total operating budget existed at year end.
- Total operating costs increased from 1997 to 1998 by \$452,638 or 13%. While budgeted, these increased operating costs were as a result of:
 - \$229,061 increase in salaries and benefits for Commission staff due to market adjustments.
 - \$102,087 increase in administrative costs to provide office equipment and furnishings in compliance with Occupational Health and Safety standards.
 - \$69,729 increased lease rental and operating costs and amortization of leasehold improvements.
 - \$33,446 for computer hardware and software requirements to meet implementation objectives.
 - \$17,130 increase in travel costs to ensure appropriate scheduling of Appeals Commissioners.

CAPITAL BUDGET

- A surplus of \$70,038 existed after completion of leasehold improvements.
- Leasehold improvements were undertaken to consolidate Appeals Commission offices and hearing room space in Calgary and provide for more hearing room capacity. This was done in conjunction with the renewal of the lease for a six year term.

APPENDIX C

APPEALS COMMISSIONER APPOINTMENTS

As of December 31, 1998 the Appeals Commission was, comprised of the following members appointed by Order of the Lieutenant Governor in Council:

Chairman and Chief Appeals Commissioner

G. Pheasey

Appeals Commissioners/Hearing Chairs

P. Farmer
M. Fulford
T. Irwin

L. Kelly
J. Prowse

M. Tamtom
R. Vermette

Appeals Commissioners

K. Benson
H. Buchwald
W Canning
D. Colley-Urquhart
M. Dungey
O. Eveneshen
J. Frost

M. Halpen
J. Hubler
D. Hunt
K. Kunicki-Tadman
G. Litchfield
E. Luders
J. Neale

B. Nimmo
B. Otterdahl
E. Paterson
L. Rasmussen
B. Stephenson
D. Turner

The remuneration for full-time Appeals Commissioner/Hearing Chairs, part-time Appeals Commissioners, and the Chairman & Chief Appeals Commissioner is established by Order-in Council as follows:

Full-time Appeals Commissioner/Hearing Chair	Part-time Appeals Commissioner	Chairman & Chief Appeals Commissioner
\$ 62,000 to \$ 85,000	\$ 200 per day \$ 120 for ½ day	\$80,000 to \$111,400

Annual payments to part-time Commissioners ranged from \$13,440 to \$42,060 based on the total number of days worked in the year. The average salary and benefits paid to a full-time Appeals Commissioner/Hearing Chair was \$81,787. Salary and benefits for the Chairman & Chief Appeals Commissioner was \$122,702.

PROCESS FOR RECRUITMENT OF APPEALS COMMISSIONERS

- The positions are advertised and applications are invited from all interested applicants.
- The applications are screened by the Chief Appeals Commissioner to identify a list of candidates for initial interview.
- Initial interviews of these candidates are conducted to establish a short-list.
- A panel consisting of a representative of workers, a representative of employers, the Chief Appeals Commissioner and a human resources advisor conduct in-depth interviews of the short-listed candidates.
- The selection panel presents recommendations to the Minister of Labour for appointments of appeals commissioners.
- The Minister presents recommendations for appointment of appeals commissioners for Cabinet approval.
- Based on Cabinet approvals Orders in Council are presented to the Lieutenant Governor in Council for signature.

Special thanks to Mike Pishak and Melannie Gorniuk for participating in the selection process in 1998.

APPENDIX D

AVAILABLE PUBLICATIONS

'A Guide to the Appeals Commission'

A brochure to provide basic information regarding the Appeals Commission and how it operates.

'Appeals Commission Rules of Procedure'

Includes the Rules of Procedure that the Appeals Commission has adopted to govern how the Appeals Commission will deal with various administrative processing matters. It is intended to help parties prepare for and participate in the appeals process.

'In Review'

A quarterly newsletter which publishes a summary of various decisions issued by the Appeals Commission. It is available by subscription at the cost of twelve dollars per year.

'Annual Report for 1998'

Reports on the activities of the Appeals Commission for 1998. Limited copies of previous Annual Reports are available.

'Appeals Commission Strategic Plan'

The Appeals Commission Three Year Strategic Plan identifies the long-term and processing objectives for 1999 to 2001. Also available is a Three Year Strategic Plan with implementation details which provides more detailed explanation of activities for 1999 to 2001.

Copies of all of the above publications are available by contacting:

Appeals Commission
901, 10109 – 106 Street
Edmonton, AB T5J 3L7
Telephone: (780) 412-8700 - Fax: (780) 412-8701

or

Appeals Commission
4th Floor, 1701 Centre Street North
Calgary, AB T2E 7Y2
Telephone: (403) 508-8800 - Fax: (403) 508-8822

Our Values

Respect: *We respect all persons treating them with honesty and integrity.*

Excellence: *We are committed to excellence in service through quality and consistency.*

Fairness: *We achieve fairness through being impartial and unbiased.*

Co-operation: *We achieve co-operation through sincere, open communication and teamwork.*

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